

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(831) 427-4863

F16b

F16Filed:	08/29/2007
49th day:	10/17/2007
Staff:	M.Watson
Staff report prepared:	09/20/2007
Hearing date:	10/12/2007

APPEAL STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION

Appeal number.....A-3-CML-07-042, Sayles SFR Addition

Applicants.....Shan Sayles

Appellants.....Kathy Grady

Local government.....City of Carmel-by-the-Sea

Local decision.....Approved with conditions by the Carmel-by-the-Sea City Council on August 7, 2007 (City Permit No. DS 07-28).

Project location.....Eastside of San Antonio Avenue between 11th and 12th Avenues (Block X, Lot 12), Carmel-by-the-Sea, Monterey County (APN 010-279-11).

Project description.....Demolition of an existing 314 square foot subordinate unit and construction of a 512 square foot, two-story addition to an existing 1,264 square foot single family residence with garage. The proposed development of the 4,000 square foot lot also includes removal of 396 square feet of existing impervious surface coverage.

File documents.....City of Carmel-by-the-Sea Local Permit File No. DS 07-28; supplemental materials submitted by the City dated September 11, 2007; and City of Carmel-by-the-Sea certified Local Coastal Program.

Staff recommendation ...No Substantial Issue

Summary of staff recommendation: On August 7, 2007, the City of Carmel-by-the-Sea City Council approved a Coastal Development Permit (CDP) authorizing the demolition of an existing 314 square foot subordinate unit and removal of 397 square feet of impervious surface coverage, and the construction of a 512 square foot, two-story addition at the rear of an existing 1,264 square foot residence with attached garage. The proposed development is located on a standard 4,000 square foot lot within the LCP's Beach and Riparian Overlay zone and the site is zoned for low-density residential (R-1). The Location Map is attached as Exhibit 1. The appeal of this decision contends that the project violates LCP view protection standards as they relate to protection of private views from existing residences. The submitted grounds for appeal are attached to this report as Exhibit 3.



**California Coastal Commission
October 2007 Meeting in San Pedro**

Staff: Mike Watson Approved by:
F16b-10-2007

Staff recommends that the Commission find that the appeal does not raise a substantial issue. The project is consistent with the City's design guidelines and conforms to all applicable LCP standards, including the Beach and Riparian Overlay standards specifically established for development along the City's shoreline. The new addition has been sited to address the potential impacts on neighbors' views and to ensure that the maximum amount of privacy is preserved. In addition, and although not part of the appeal and not a basis for considering whether the appeal raises a substantial issue, the proposed addition will not have a significant impact on neighborhood character/public coastal views.

Staff recommends that the Commission find that no substantial issue exists with respect to the appeal contentions questioning this project's conformance with the City's LCP, and that the Commission decline to take jurisdiction over the coastal development permit for the project.

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Exhibits

- Exhibit 1: Project Location Map
- Exhibit 2: City of Carmel Adopted Staff Report, Findings and Conditions
- Exhibit 3: Appeal Contentions of Kathy Grady
- Exhibit 4: Project Plans and Elevations
- Exhibit 5: Photographs
- Exhibit 6: Applicant's Response to Appeal Contentions

1. Local Government Action

On May 23, 2007 the Carmel-by-the-Sea Design Review Board (DRB) denied a coastal development permit (CDP) for the demolition of the existing subordinate unit and construction of an addition to the existing single family residence on San Antonio Avenue (between 11th and 12th Avenues) in the LCP's Beach & Riparian Overlay district. The primary basis for the denial was the potential impacts of the proposed project on private views from neighboring properties to the east (i.e., inland and upslope) of the subject property.

An appeal of the DRB's decision was heard on August 7, 2007 by the Carmel City Council which



overturned the DRB decision and authorized the CDP for the proposed addition. In making its decision, the City Council determined that the DRB incorrectly applied the LCP standards related to protection of private views and acted to protect the views of a single home owner rather than balancing the views of all properties. The City Council upheld the appeal and approved the proposed addition with a condition to require that the addition be moved two feet north of the proposed original location to lessen the impact on the neighbor to the east (i.e., the current Appellant in this appeal to the Commission). See Exhibit 2 for the City Council's adopted staff report, findings, and conditions.

Notice of the City's action was received in the Commission's Central Coast office on August 15, 2007. The Appellant, Kathy Grady, participated throughout the local process and submitted a timely appeal of the City's approval to the Coastal Commission on August 22, 2007.

2. Standard of Review for Appeals

Coastal Act Section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. This project is appealable because the area of development is located within 300 of the top of the seaward face of the coastal bluff.

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified local coastal program or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a de novo coastal development permit hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under Section 30604(b), if the Commission conducts a de novo hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. This project is not located between the nearest public road and the sea and thus, this additional finding need not be made in a de novo review in this case.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicants, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the de novo stage of an appeal.



3. Summary of Appellant's Contentions

The Appellant contends that the project approved by the City of Carmel-by-the-Sea is inconsistent with the LCP's R-1 District Design Regulations which establish guidelines for protection of private views in new development proposals. Specifically, the Appellant asserts that the City-approved project does not conform to certified LCP Design Guidelines 5.0 and 5.3, and Implementation Plan (IP) Sections 17.10.1.K (Private Views) and 17.10.1.M (Equity), which recommend that new development be sited and designed to equitably maintain view opportunities and to balance the private right to views from all parcels affected by a development proposal.¹ A copy of the Appellant's contentions is attached to this report as Exhibit 3. The Applicant's response to the Appellant's contentions is attached to this report as Exhibit 6.

4. Staff Recommendation on Substantial Issue

Staff recommends that the Commission determine that no substantial issue exists with respect to the grounds on which the appeal was filed. A finding of no substantial issue would mean that the City's decision in this matter would be final (conversely, a finding of substantial issue would bring the project under the jurisdiction of the Commission for hearing and action).

Motion. I move that the Commission determine that Appeal Number A-3-CML-07-042 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

Staff Recommendation of No Substantial Issue. Staff recommends a **yes** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

Resolution to Find No Substantial Issue. The Commission hereby finds that Appeal Number A-3-CML-07-042 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Program and/or the public access and recreation policies of the Coastal Act.

¹ The Appellant cited Design Guideline Policy 5.1 which relates to preserving privacy for adjacent properties. The text of the appeal, however, identifies the need to balance and share view opportunities to natural features, which are actually stated in the objectives of Design Guideline Policy 5.0. Similarly, the Appellant identifies the relevant LCP Sections as 17.10.010.K and 17.10.010.M, when in fact these sections are numbered 17.10.1.K and 17.10.1.M. The corrected citations are used in this report.



Recommended Findings and Declarations

The Commission finds and declares as follows:

5. Project Location, Description, and Background

The project approved by the City is located on a single 4,000 square foot lot located one block east of the shoreline on the east side of San Antonio Avenue between 11th and 12th Avenues. The subject site is inland of all of the following: the shoreline at Carmel Beach, Scenic Drive (the first through public road), houses along Scenic Drive, houses along the west side of San Antonio Avenue, and San Antonio Avenue itself. The site slopes gently to the east away from San Antonio Avenue and is currently improved with a one-story single family residence (1,089 square feet) and attached garage (175 square feet), and a detached subordinate unit (314 square feet). The subordinate unit contains all necessary elements of a stand alone studio residence (i.e., kitchen, bath, living space, etc.). The site is zoned for low density residential (R-1) and is subject to the LCP's Beach and Riparian Overlay standards because it is within 300 feet of the coastal bluff. See Exhibit 1 for Location Maps.

The site slopes up from a 90 feet elevation at San Antonio Avenue to roughly 104 feet above mean sea level at the rear of the property. The Applicant proposes to demolish the existing subordinate unit at the rear of the site and remove 396 square feet of impervious site coverage, and construct a two-story 512 square foot addition to the existing residence. The proposed two-story addition would be located in the rear third of the site, at a finished floor elevation of 100 feet. See Exhibit 4 for Project Plans and Elevations.

Finally, the site contains an estimated 1,438 square feet of impervious site coverage (i.e., walkways, driveway, decks, and patios). The maximum amount of site coverage allowed under the certified LCP for new development on a 4,000 square foot lot is 10%, or 400 square feet, though a four percent bonus (up to 160 square feet) may be granted to properties if 50% or more of all proposed coverage is comprised of pervious or semi-pervious materials. The Applicant's proposal includes the replacement of an existing asphalt driveway with sand-set pavers and thus meets the necessary requirements for the additional site coverage bonus. Accordingly, the LCP allowance is 560 square feet. However, the walkways and decks were installed concurrently with the construction of the main residence and subordinate unit and therefore are legal non-conforming. In such a case, the Applicant is required by the LCP to remove impervious coverage (whether existing legal conforming or existing legal non-conforming) at a rate of 2:1 (2 square feet of impervious coverage for every square foot of additional floor area). In this case, the 198 square feet of additional floor area (512 square feet – 314 square feet) is offset by removal of 396 square feet of impervious surface coverage, thus meeting this LCP requirement.

6. Substantial Issue Findings – View Protection

A. Applicable LCP Policies



The Appellant's contentions allege LCP private view protection inconsistencies. The LCP's certified zoning standards establish guidelines for development within the Beach & Riparian Overlay district. These policies in part, serve to protect and preserve private views of the coastline. The Appellant specifically cites LCP Design Guidelines 5.0 and 5.3, and LCP Sections 17.10.1.K and 17.10.1.M that state:

Design Guideline 5.0. Privacy, Views, Light and Air. Objective. (Second bullet) *To balance and share view opportunities to natural features and landmarks.*

Design Guideline 5.3. Maintain views through a property to natural features when feasible. *Locate major building masses to maintain some views through the site. Consider keeping the mass of a building low in order to maintain views over the structure. Also consider using a compact building footprint to maintain views along the sides of a structure.*

Section 17.10.1.K. Private Views. *Designs should respect views enjoyed by neighboring parcels. This objective is intended to balance the private rights to views from all parcels that will be affected by a proposed building or addition. No single parcel should enjoy a greater right than other parcels except the natural advantages of each site's topography. Buildings which substantially eliminate an existing significant view enjoyed on another parcel should be avoided.*

Section 17.10.1.M. Equity. *Design controls and conditions of approval should be reasonable and fair.*

B. LCP Consistency Analysis

The project site is located on the east side of San Antonio Avenue (2nd block from shoreline) midway between 11th and 12th Avenues. The neighborhood is improved with single family residences, one and two stories in height. The rear yards on the east side of San Antonio back up to the rear yards of the properties located on the west side of Carmelo Street (third block inland from the shoreline), which is similarly developed with single family residences. In addition to the neighboring existing primary residences, there are also many secondary units, subordinate structures, and a significant number of trees and shrubs growing interspersed with the built environment. Due to the gradually upward slope of the land from west to east, most of the properties on San Antonio and Carmelo enjoy some type of filtered view of Carmel Bay and the shoreline over and through residential development and mature foliage downslope and seaward of such properties.

In the appeal, the Appellant contends that the City Council's decision authorizing construction of the two-story addition is inconsistent with the certified LCP standards protecting private views because the proposed residential expansion will substantially eliminate their existing view of the coastline, and because the City's action does not balance the views of respective homeowners east of the development site (see Exhibit 3 for full text of appeal). The Appellant estimates that approximately 40% of their primary (second story) view will be lost due to construction of the addition.

As noted in the background findings above, the Applicant proposes to add a two-story element, 512



square feet in total size, at the rear of an existing single story residence on a standard 4,000 square foot lot on the east side of San Antonio Avenue. The two-story addition is designed at 18 feet in height and is located slightly off center (to the north) of the centerline of the 40' wide parcel. The architectural design of the addition is a simple rectangular shape with a cross gable opening on the long axis facing the north. Materials to be used on the addition include stucco siding, wood windows, and a composite shake roof to match the style of the existing home (See Exhibit 4 for project plans and elevations).

From a design standpoint, the proposed addition is consistent with and incorporates the principles of the LCP's general design guidelines which recommend the use of simple, modest designs, similar in size and scale to existing surrounding development. The relatively small (16' x 20') rectangular shape and the use of natural materials compliments the character of the existing residence and neighborhood. The two-story addition is also designed at a maximum height of 18 feet consistent with the height allowed by the LCP's Beach and Riparian Overlay standards.² In terms of visual sensitivity, the proposed project site does slope upward from San Antonio Avenue and the proposed addition will be located near the rear of the site. Accordingly, the addition will appear to rise above the rest of the one-story residence, tempered somewhat by the 18' height limit as seen from San Antonio.

In terms of public views (which are not a part of the appeal and not a basis for considering whether the appeal contentions raise a substantial issue, but which are germane to a broader discussion of LCP requirements with respect to views), the new massing in the public viewshed (e.g., San Antonio Avenue) is not ideal. However, its affect on neighborhood character/public views should be minimal in this case. Additional articulation and other design elements to help the structure more readily synthesize into the established aesthetic/public viewshed could be pursued, but aren't necessary for protecting neighborhood character/public views in this case.

In terms of private views, siting the addition to the rear in its proposed configuration does introduce new massing within the views of those properties located further to the east. However, working within the framework of the certified LCP, the City approved the project with a requirement to reorient the addition slightly north of center on the property in order to minimize the view blockage of the homeowner directly east (i.e., the Appellant) and to further balance the visual impacts as seen from several properties fronting Carmelo Street.

The Appellant's contention that their private view will be destroyed appears to be an overstatement. The Appellant's residence is constructed at an elevation that is approximately 6' higher than the City-approved addition (due to the fact that it is inland and upslope of the subject site). Accordingly, the Appellant enjoys and will continue to enjoy Bay views from both the first floor and second floor vantages of its residence and property. That is not to say that there won't be any visual impairment due to the project. To the contrary, coastal views directly west from the first floor of the Appellant's residence will be diminished. However, the rear yard patio will retain blue water views, as well as views to the south from the ground floor of the residence. Moreover, the proposed addition will have far less

² In order to address potential conflicts arising from development within this visually sensitive area, the 18' Beach and Riparian Overlay maximum height standard is a full 6' lower than the general residential development height standards applied elsewhere by the LCP (i.e., elsewhere residential heights can extend up to 24 feet).



impact on second floor views from the Appellant's residence and second floor deck. See Exhibits 5 and 6 for photos of the private views in question.

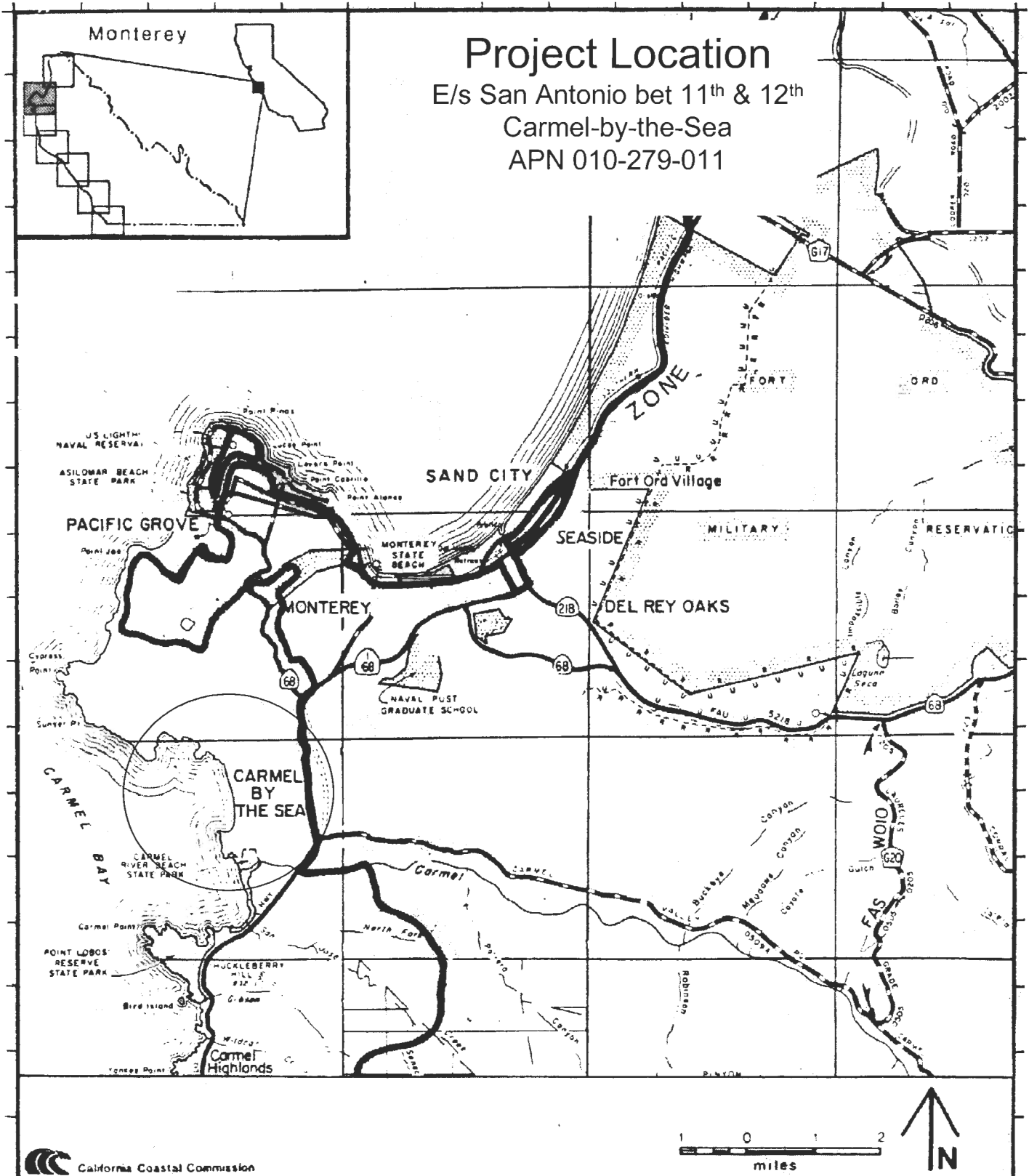
In addition, the LCP does not require private views to be maintained as is. Such a requirement, were it to apply, would essentially prohibit residential additions that included above structure/ground elements in most cases. Rather the LCP requires a thoughtful balancing of private view impacts when such development is considered. The City's action in this case is consistent with that requirement.

In sum, the issues raised by the Appellant do not rise to the level of substantial issues with respect to the project's conformance with the certified LCP.

C. Substantial Issue Conclusion

As required by the LCP, private views have been respected by balancing the rights to views by all parcels affected by the proposed project, and the City has endeavored in their action to maintain view opportunities to natural features and some views through the site from other properties, and to avoid the project eliminating significant views from other parcels, including the Appellant's. The City's approval was in conformance with LCP Design Guidelines 5.0 and 5.3, and LCP Sections 17.10.1.K and 17.10.1.M, as cited by the Appellant. **Therefore, the Appellant's contentions do not raise a substantial issue and the Commission declines to take jurisdiction over the coastal development permit for this project.**





Project Location

E/s San Antonio bet 11th & 12th

Carmel-by-the-Sea

APN 010-279-011

CASANOVA

19

18

17

TAX CODE AREA I-00

ASSESSOR'S MAP
BOOK 10, PAGE 21



SCALE 1/4" = 100 FT.

AVE.

AVE.

AVE

CAMINO

REAL

26

28

CARMELO

ST.

9TH

10TH

11TH

12TH

SAN ANTONIO

AVE.

30

30

29

29

CARMEL BY THE SEA ADDITION
BLOCKS J, K, L, P, Q, R, V, W, X

Project Site

Exhibit 1: Project Location Maps

A-3-CML-07-042

Sayles SFR Addition

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4-4-84

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CITY OF CARMEL-BY-THE-SEA

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

STAFF REPORT Adopted & Granted 8/7/07

TO: MAYOR McCLOUD AND COUNCIL MEMBERS

THROUGH: RICH GUILLEN, CITY ADMINISTRATOR

FROM: SEAN CONROY, SENIOR PLANNER

DATE: 7 AUGUST 2007

SUBJECT: CONSIDERATION OF AN APPEAL OF THE DESIGN REVIEW BOARD'S DECISION TO DENY A DESIGN STUDY AND COASTAL DEVELOPMENT PERMIT APPLICATION FOR THE SUBSTANTIAL ALTERATION OF A RESIDENCE LOCATED IN THE SINGLE FAMILY RESIDENTIAL (R-1) AND BEACH AND RIPARIAN OVERLAY (BR) DISTRICTS.

SUMMARY RECOMMENDATION

Grant the appeal and overturn the Design Review Board's decision.

BACKGROUND & DESCRIPTION

This site is located on the east side of San Antonio Avenue between Eleventh and Twelfth Avenues. The site is developed with a one-story residence with a subterranean garage. A subordinate unit also exists towards the rear of the site.

The applicant is proposing to construct a 478 square foot addition near the northeast corner of the site. The new addition will accommodate a bedroom/office on the lower level and a 293 square-foot master bedroom and bath on the second story. The new addition will be clad in stucco siding and have wood windows and a composite shake roof. Two bay windows are proposed on the west elevation of the existing residence.

The subordinate unit on the site will be demolished to accommodate the proposed addition and 397 square feet of nonconforming site coverage is also proposed for removal.

The Design Review Board denied this application on 23 May 2007. The primary basis for the denial was the Board's determination that the impact of the project on the views enjoyed by the neighbor to the east was substantial.

Exhibit 2: Staff Report Findings
A-3-CML-07-042
Sayles SFR Addition
Page 1 of 5

PROJECT DATA FOR A 4,000 SQUARE FOOT SITE:			
Site Considerations	Allowed	Existing	Proposed
Floor Area	1,800 sf (45%)	1,598 sf (40%)	1,796 (45%)
Site Coverage	560 sf (13%)*	1,438 sf (36%)	1,041 sf (26%)
Trees (upper/lower)	3/1 trees	0/1 trees	0/1 trees
Ridge Height (1 st /2 nd)	18 ft.	17 ft.	18 ft.
Plate Height (1 st /2 nd)	12 ft./18 ft.	15 ft.	16 ft.
Setbacks	Minimum	Existing	Proposed
Front	15 ft.	16 ft. 6 in.	16 ft. 6 in.
Composite Side Yard	10 ft. (25%)	5 ft. 6 in. (14%)	5 ft. 6 in. (14%)
Minimum Side Yard	3 ft.	2 ft.	2 ft.
Rear	3/15 ft.	18 ft.	7 ft. 6 in.
*Includes a 4% bonus if 50% of all coverage is permeable or semipermeable.			

EVALUATION

Basis for Appeal: The appellant is requesting that the Council overturn the Design Review Board's decision for the following reasons:

- 1) The Board incorrectly interpreted CMC 17.10.010.K relating to "private views".
- 2) The Board acted to protect one owner's views rather than balancing views, as specified in the ordinance.

Zoning Standards and Design Guidelines: CMC 17.10.010.K indicates that new designs should respect the views enjoyed by neighboring parcels and that the private rights to views should be balanced from all properties affected by proposed development. The ordinance further states, "*Buildings which substantially eliminate an existing significant view enjoyed on another parcel should be avoided.*"

Design Guidelines 5.1 - 5.3 encourage maintaining "*view opportunities to natural features that lie outside the property*" and encourage locating building masses "*to maintain some views through the site from other properties.*"

The applicant's residence currently enjoys ocean views from the den, living room and dining room. The neighboring properties to the east also enjoy ocean views. The proposed project will have an impact on views, particularly for the neighbor directly to

the east. The proposed addition will block a significant portion of the ocean views from the neighbor's living room on the lower level of the residence. However, views of the ocean would still be available from other portions of the lower level, and the views from the second-story will not be affected. The following are options that the Council may wish to discuss:

- 1) Determine that the proposed addition is appropriate since some ocean views can still be enjoyed by the neighboring properties to the east.
- 2) Require that the proposed addition be moved towards the north. This will lessen the impact on the neighbor directly to the east, but may create an impact on the neighbor to the northeast.
- 3) Determine that a second story addition is inappropriate and uphold the Design Review Board's decision. There is adequate space on the lot to accommodate the same amount of square footage in a one-story design that is currently proposed for the two-story addition. However, even a one-story addition has the potential of impacting existing views of the neighbor to the east due to slope of the site near the rear of the property.

Staff recommends option #2 as it represents a fair balancing of private views. By moving the addition a few feet to the north, more of the addition will be screened by the existing forest canopy and less of the neighbor's views will be impacted. The addition will become slightly more visible to the neighbor to the northeast, but the neighbor to the northeast will also still enjoy significant views to the west and southwest.

RECOMMENDATION

Overturn the Design Review Board's decision and approve the Design Study and Coastal Development Permit applications with the attached special conditions.

SPECIAL CONDITION

1. The proposed addition shall be moved two feet to the north to lessen the view impact on the neighbor to the east.

CITY OF CARMEL-BY-THE-SEA

CITY COUNCIL

FINDINGS FOR DECISION Adopted & Approved 9/11/07

DS 07-28

Shan Sayles Appeal

E/s San Antonio bet. 11th & 12th

Block X, Lot 12

CONSIDERATION:

Consideration of the adoption of findings in support of the Council's decision to grant an appeal overturning the Design Review Board's decision to deny a project located in the Single Family Residential (R-1) and Beach and Riparian Overlay (BR) Districts.

FINDINGS OF FACT:

1. This site is located on the east side of San Antonio Avenue between Eleventh and Twelfth Avenues.
2. The site is currently developed with a one-story single-family residence and a detached subordinate unit.
3. The City issued a Determination of Ineligibility for listing on the City's Historic Inventory on 23 March 2007.
4. Design Study and Coastal Development Permit applications were filed with the City on 8 March 2007. The application included plans to construct a two-story addition towards the rear of the site.
5. The project is exempt from environmental review based on California Environmental Quality Act Categorical Exemption #3.
6. The Design Review Board denied this project on 23 May 2007.
7. The property owner filed an appeal of the Design Review Board's decision on 30 May 2007.
8. The City Council granted the appeal and overturned the Design Review Board's decision on 7 August 2007.

FINDINGS FOR DECISION:

1. While the proposed project will have some impacts on existing views enjoyed by neighboring properties, the impacts are minimal. The project is consistent with

Exhibit 2: Staff Report Findings
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CMC 17.10.10.K and Residential Design Guidelines 5.1 – 5.3, which encourage balancing the rights to views and maintaining some view opportunities through the site for all properties affected by a project.

2. The proposed project is consistent with the mass and scale of other structures in the area and is considerate of the privacy of neighboring properties.
3. The existing forest canopy helps reduce the visual impact of the project on neighboring properties.

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(831) 427-4863 FAX (831) 427-4877
www.coastal.ca.gov

**COMMISSION NOTIFICATION OF APPEAL**

DATE: August 30, 2007

TO: Brian Roseth, Director, Community Planning & Building Dept.
City of Carmel, Community Planning & Building
Carmel City Hall
P.O. Box Cc
Carmel-By-The-Sea, CA 93921

FROM: Steve Monowitz, District Manager

RE: Commission Appeal No. A-3-CML-07-042

Please be advised that the coastal development permit decision described below has been appealed to the California Coastal Commission pursuant to Public Resources Code Sections 30603 and 30625. Therefore, the decision has been stayed pending Commission action on the appeal pursuant to Public Resources Code Section 30623.

Local Permit #: DS 07-28

Applicant(s): Shan Sayles

Description: Construct a 478 square foot addition near the northeast corner of the site. Demolish subordinate unit on the site to accommodate the proposed addition and 397 square feet of nonconforming site coverage proposed for removal.

Location: San Antonio (between 11th & 12th), Carmel (Monterey County)
(APN(s) 010-279-11)

Local Decision: Approved w/ Conditions

Appellant(s): Kathy Grady

Date Appeal Filed: 8/29/2007

The Commission appeal number assigned to this appeal is A-3-CML-07-042. The Commission hearing date has not yet been established for this appeal. Within 5 working days of receipt of this Commission Notification of Appeal, copies of all relevant documents and materials used in the City of Carmel's consideration of this coastal development permit must be delivered to the Central Coast District office of the Coastal Commission (California Administrative Code Section 13112). Please include copies of plans, relevant photographs, staff reports and related documents, findings (if not already forwarded), all correspondence, and a list, with addresses, of all who provided verbal testimony.

A Commission staff report and notice of the hearing will be forwarded to you prior to the hearing. If you have any questions, please contact Mike Watson at the Central Coast District office.

cc: Shan Sayles

Exhibit 3: Appeal Contentions
A-3-CML-07-042
Sayles SFR Addition
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STATE OF CALIFORNIA - THE RESOURCES AGENCY

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE

725 FRONT STREET, SUITE 300

SANTA CRUZ, CA 95060-4508

VOICE (831) 427-4983 FAX (831) 427-4977

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT****Please Review Attached Appeal Information Sheet Prior To Completing This Form.****SECTION I. Appellant(s)**

Name: Kathy Grady c/o Harry Delizonna, Law Office of Harry Delizonna

Mailing Address: 1619 Sunset Drive

City: Pacific Grove,

Zip Code: 93950

Phone: 831-373-8206

SECTION II. Decision Being Appealed

1. Name of local/port government:

City of Carmel

2. Brief description of development being appealed:

A substantial alteration of a single story residence by addition of a monolithic second story, which the Design Review Board unanimously rejected on May 23, 2007.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

Eastside of San Antonio Avenue between Eleventh and Twelfth Avenues. APN #010-279-011

4. Description of decision being appealed (check one.):

- ☐ Approval; no special conditions
- ☒ Approval with special conditions:
- ☐ Denial

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COASTAL COMMISSION
CENTRAL COAST AREA

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:APPEAL NO: A-3-CML-07-042DATE FILED: August 29, 2007DISTRICT: Central Coast

Exhibit 3: Appeal Contentions
A-3-CML-07-042
Sayles SFR Addition
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APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- ☐ Planning Director/Zoning Administrator
☒ City Council/Board of Supervisors
☐ Planning Commission
☐ Other

6. Date of local government's decision: August 7, 2007

7. Local government's file number (if any): VA 07-1

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Shan Sayles
P.O. Box 6258, Carmel CA 93921

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) James Finnegan (wife Gail). 5SW of 11th on Carmelo, Carmel
Work Address: 1600 Sacramento Inn Way, Suite 216, Sacramento, CA 95815

(2) Gary Broad
Ross Town Planner
100 Marina Blvd.
San Rafael, CA 94901

★ (3) Mary Frost
4 NE of 12th Carmelo, Carmel, CA, 93921

(4) Bill and Marylou Shellooe, P.O. Box 773, Carmel, CA 93921

5. William Trainor: 8260 Country Lake Dr., Sacramento, CA 95662
6. Henry Trainor, 29 Rockaway Avenue, San Francisco, CA 94121
7. Tammy Kornfeld, 314 W. Baltimore, Larkspur, CA 94939
8. James & Gail Finnegan, 1836 Carmelo Drive, Carmichael, CA 95608
★ 9. Mary Frost, P.O. Box 2176, Carmel, CA 93921

Exhibit 3: Appeal Contentions
A-3-CML-07-042
Sayles SFR Addition
Page 3 of 6

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

SECTION IV. Reasons Supporting This Appeal

PLEASE NOTE:

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

The City Council violated its own rules and regulations because, contrary to the Design Review Board's unanimous decision to reject this permit application for a massive 478 SF, two story addition, it granted the permit although the development did not conform to the standards set forth in the certified local coastal program.

Appellant and other neighbors have bay views that will be destroyed and can prove that the Council's decision violated Carmel Municipal Code (CMC) Section 17.10.010K. Moreover, its action failed to balance the views of the respective home owners and acted to protect primarily the views of the permit applicant, all of which violated its own Design Guidelines.

Specifically, new designs "should be avoided" where "Buildings . . . substantially eliminate an existing significant view enjoyed on another parcel . . ."

The Council's action was flawed from its initial involvement. The Council Members visited the site, and at that time saw height poles of two different sets (see attached photos, Exhibits A – E). The red netting was the original and the yellow was set five feet to the north (right).

The Council approved the permit with a condition of 2 feet to the north, without ever seeing or learning - - before it was revealed at the hearing - - that the five foot movement to the right which they saw at the site was deceptive.

Exhibit E is from appellant's second story and clearly shows a limited, filtered present view, contrary to the Council's finding. About 40% of even that view will be destroyed. The present views of appellant will be totally destroyed. Where is the mandated "balance"?

The City's own Design Review Board had it right: If the permit issues, appellant and other houses to the east, northeast, etc., will have their views destroyed solely to pacify an owner who now has a good view but wants to build an additional bedroom and office which will also have additional good views of the water, i.e., "Rob Peter to Pay Paul."

Attached are Exhibits "F" (CD recording of Design Review Hearing) and "G" (CD of Council Hearing).

Clearly, the stated option to the Council as # 2 (single story addition) would allow for expansion to add a bedroom and office without destroying the views of the appellant and others.

The statements by some council members at the hearing, to wit, that the present tree and shrubs impact appellant's views more than the proposed construction is a prime example of the utter disregard for the legally mandated ordinances of Carmel. Such a statement discloses a complete failure to comprehend anyone's loss of view - - it reflects solely a desire to satisfy the permit applicant, at any cost.

The Council violated CMC 17.10.010K, 17.10.01M (reasonable, fair and equitable balance); Design Guidelines 5.1 (balance and sharing of views), 5.3 (some views must be maintained).

The August 7, 2007 Staff Report (which was adopted by the Council) pronouncement at page 3, is clearly erroneous wherein it states, referring to appellant's house:

"However, views of the ocean would still be available from other portions of the lower level and the views from the second-story will not be affected."

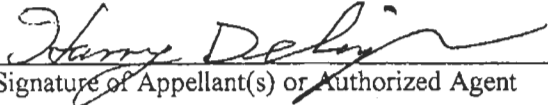
The first part of this statement is literally true, but the "available" views would be miniscule compared to what appellant presently possesses.

The second part of that sentence is unequivocally without merit.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.



Signature of Appellant(s) or Authorized Agent

Date: August 20, 2007

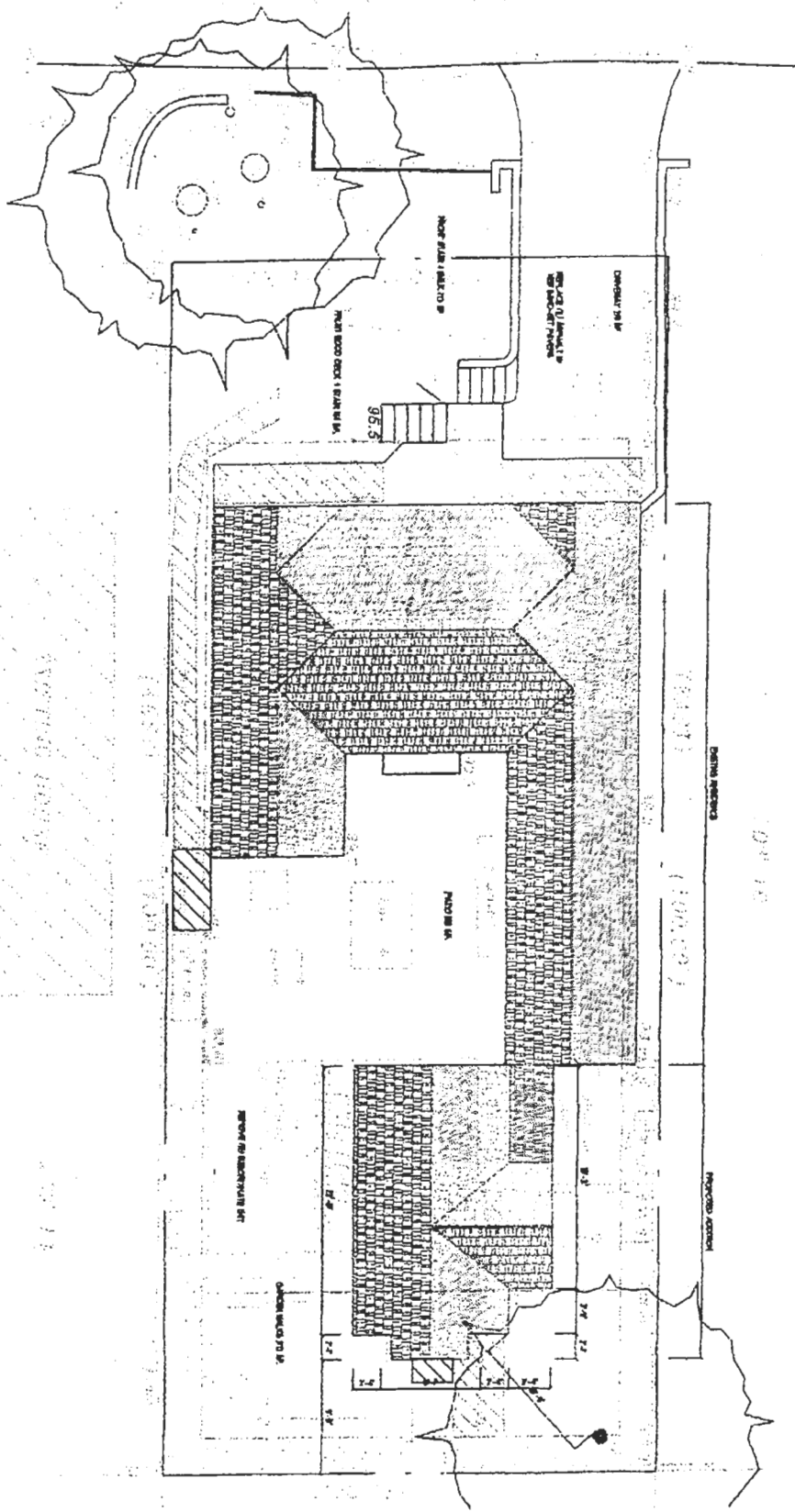
Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby authorize HARRY DELIZONNA
to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date: August 19, 2007



PROJECT DATA

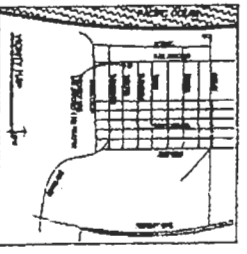
OWNER: **Mr. & Mrs. J. Viles**
 PROJECT: **Viles Residence**
 LOCATION: **1234 Main St., N. Raleigh, NC**
 DATE: **10/1/88**
 DRAWN BY: **W. H. Congleton**
 CHECKED BY: **W. H. Congleton**
 SCALE: **1/8" = 1'-0"**

FLOOR AREA

Room	Area (sq. ft.)
Living Room	1,200
Dining Room	800
Kitchen	600
Bedroom	1,000
Bath	400
Hall	200
Porch	300
Garage	1,000
Total	5,500

PERMITS

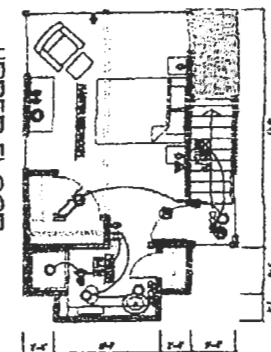
Building Permit: **10/1/88**
 Electrical Permit: **10/1/88**
 Mechanical Permit: **10/1/88**
 Plumbing Permit: **10/1/88**



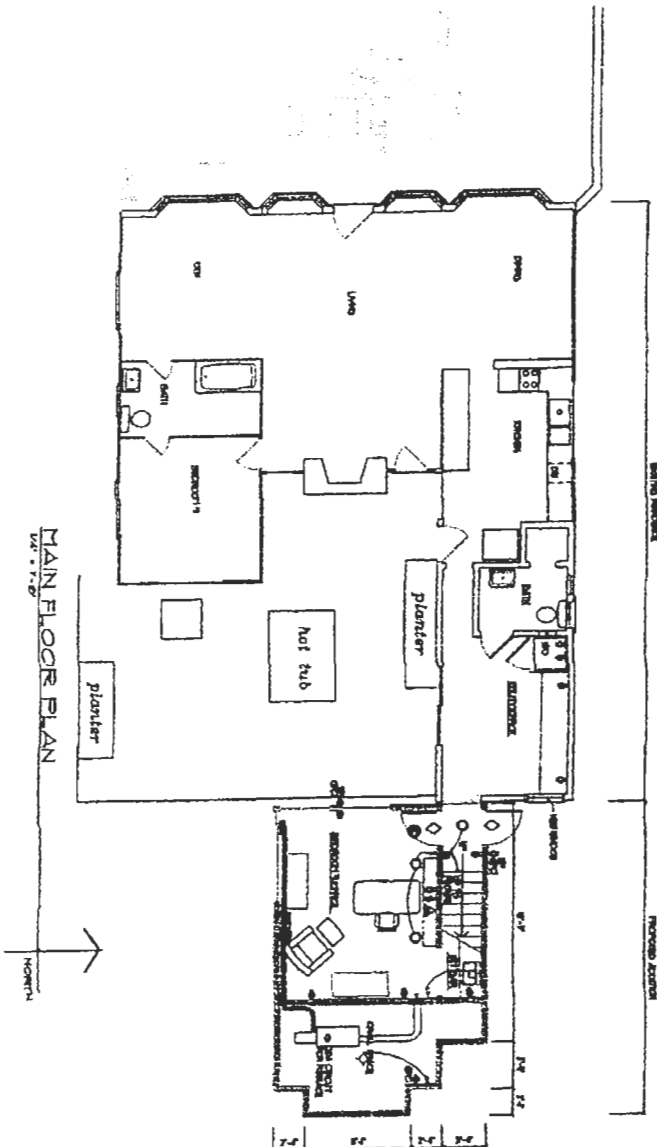
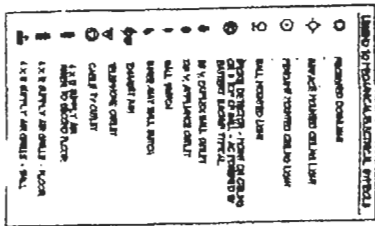
NOTES TO PERMITTER

1. THIS PLAN IS A PRELIMINARY DESIGN AND IS NOT TO BE USED FOR CONSTRUCTION.
2. ALL DIMENSIONS ARE IN FEET AND INCHES.
3. THE OWNER IS RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS.
4. THE ARCHITECT IS NOT RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION PROVIDED BY THE OWNER.



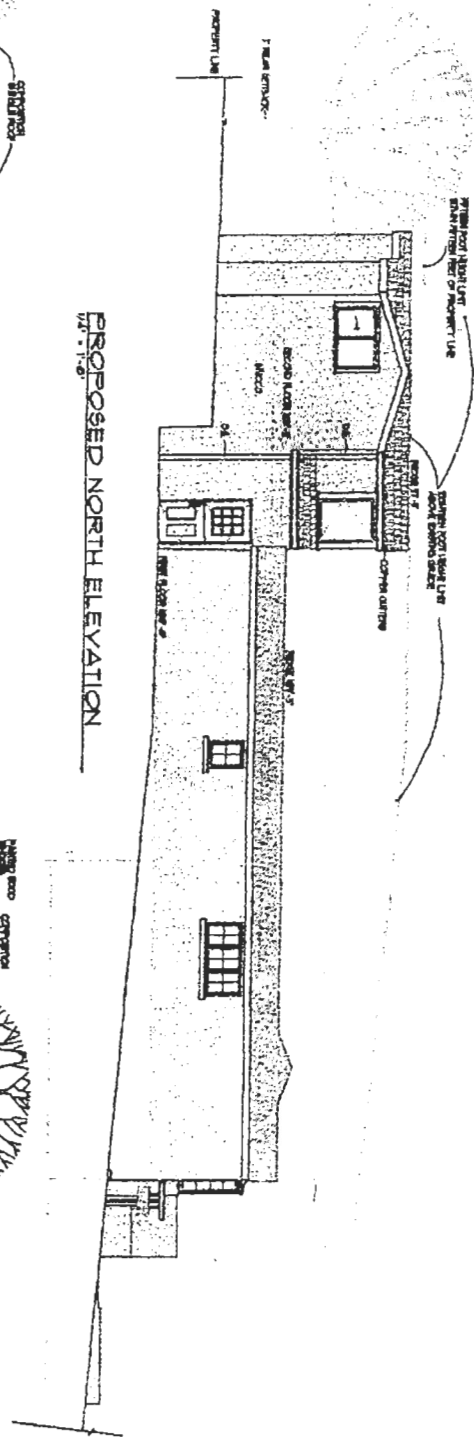


UPPER FLOOR

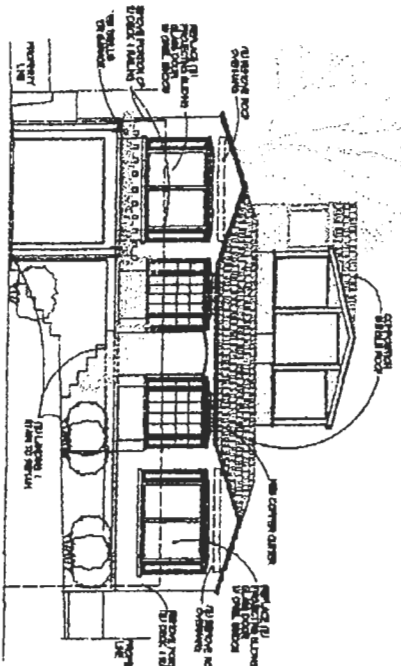


MAIN FLOOR PLAN
W4 - T-8

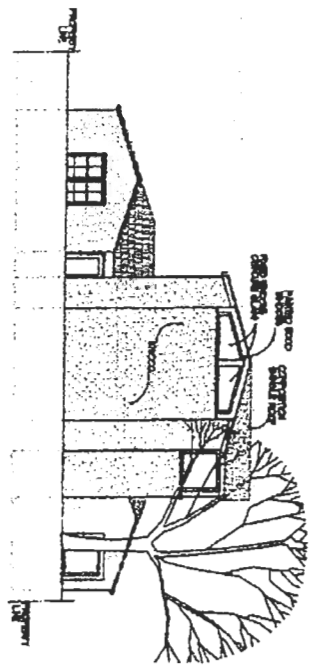
PROPOSED NORTH ELEVATION



PROPOSED WEST ELEVATION



PROPOSED EAST ELEVATION



PROPOSED SOUTH ELEVATION

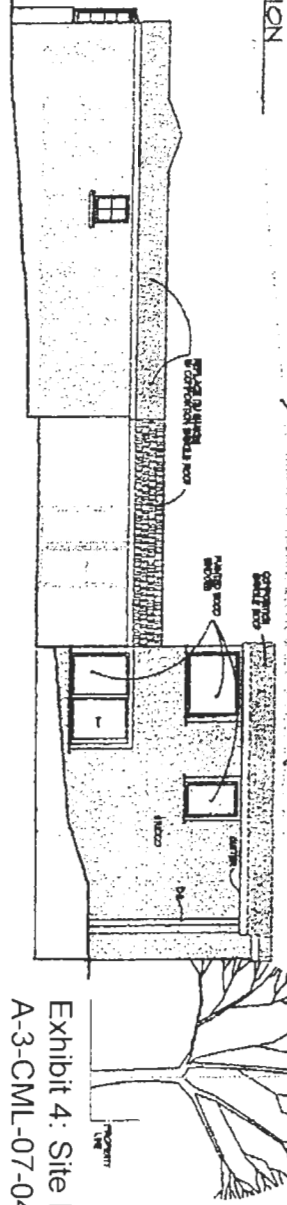
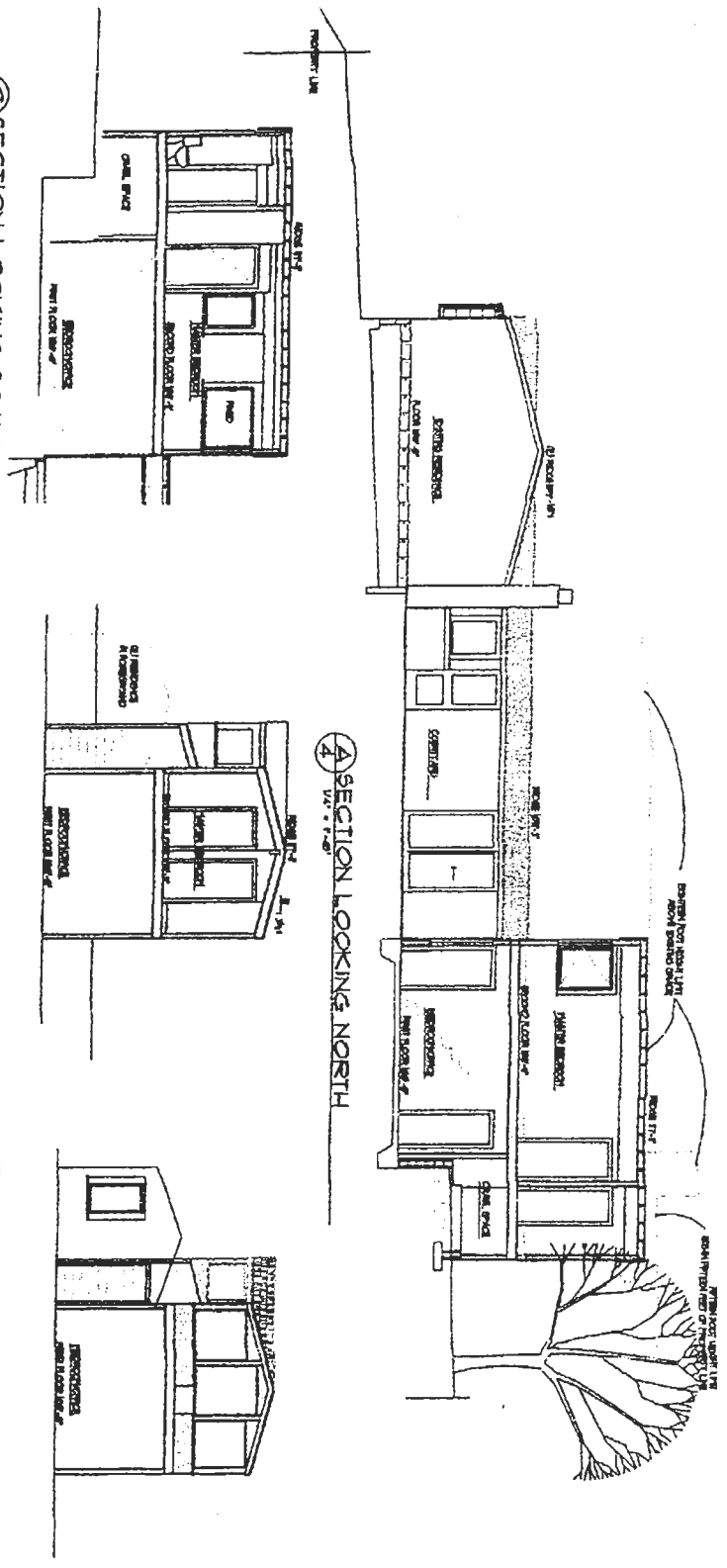


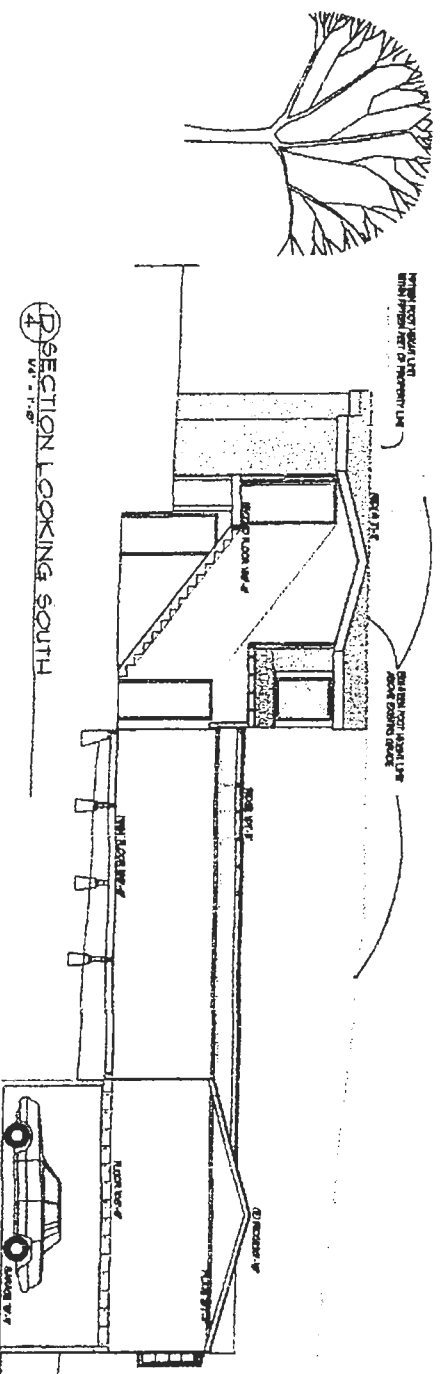
Exhibit 4: Site Plans
A-3-CML-07-042
Sayles SFR Addition
Page 3 of 4



SECTION C
LOOKING SOUTH
1/4" = 1'-0"

SECTION B
LOOKING EAST
1/4" = 1'-0"

WEST ELEVATION OF ADDITION
1/4" = 1'-0"



SECTION D
LOOKING SOUTH
1/4" = 1'-0"

Exhibit 4: Site Plans
A-3-CML-07-042
Sayles SFR Addition
Page 4 of 4





View from
ground level
patio area.
Red netting
shown in area
of proposed
development.

Shoreline view
from second
story window.
Red netting
shown in the
middle of the
photograph.



CHARLES R. KELLER
RONALD F. SCHOLL
THOMAS H. JAMISON
MARK A. CAMERON
JOHN S. BRIDGES
DENNIS G. MCCARTHY
JACQUELINE P. MCMAHUS
CHRISTOPHER E. PANETTA
DAVID C. SWEIGERT
SARA B. ROYNS
SHARILYN R. PAYNE
BRIAN E. TURLINGTON
AMBER D. PASSNO
CAROL S. HILBURN
JAY P. MENCHACA
KOREN R. MCWILLIAMS
SHERYL L. AINSWORTH

FENTON & KELLER

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

2801 MONTEREY-SALINAS HIGHWAY

POST OFFICE BOX 791

MONTEREY, CALIFORNIA 93942-0791

TEL. PHONE (831) 373-1241

FACSIMILE (831) 373-7219

www.FentonKeller.com

LEWIS L. FENTON
1925-2005

OF COUNSEL
GARY W. SAWYERS

RECEIVED

SEP 13 2007

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA September 10, 2007

JOHN S. BRIDGES

JBridges@FentonKeller.com
ext. 238

VIA EMAIL AND U.S. MAIL

California Coastal Commission
c/o Michael Watson
725 Front Street, Suite 300
Santa Cruz, CA 95060

Re: Appeal A-3-CML-07-042 (Sayles Home)
Our File: 32968.30262

Dear Mr. Watson:

We represent Mr. Shan Sayles the applicant for the project approved by the City of Carmel City Council which is the subject of the above referenced appeal. The nature of the City's approval was in the form of design review approval for a 478 square foot addition to Mr. Sayles' home in place of an existing 314 square foot subordinate unit which would be demolished.

We respectfully submit that the private view complaint filed by a neighbor, Ms. Grady, does not present any substantial issue under the LCP (reference Public Resources Code §§ 30625.b and 30603). The sense of drama intended by the appellant's resort to exaggeration and hyperbole in the appeal simply does not exist. The addition approved by the City is neither "massive" nor "monolithic." The approved addition is fairly modest for the neighborhood and the design is entirely in keeping with the simple character of the existing home and its environs (Attachment 1). Among other things, the City Council specifically found that the project conforms to all regulatory standards applicable to the site; is consistent with the City's design objectives; is simple and modest in form; is consistent with the neighborhood character and is similar in size, scale, and form to buildings in the immediate block and neighborhood; is consistent with the City's objectives for public and private views; and is consistent with the City's design guidelines and will compliment the character of the structure and the neighborhood. The appellant's private view will not be substantially eliminated let alone "destroyed" by the project. The extent to which the neighbor's private view will be affected is substantially reduced because of where the addition was located on the property (namely, behind an existing tree that already disrupts the view; see Attachment 2 photos).

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Exhibit 6: Correspondence
A-3-CML-07-042
Sayles SFR Addition
Page 1 of 11

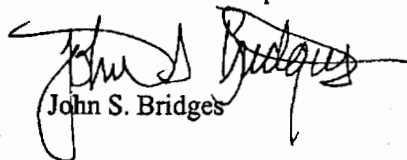
As framed by the City staff (and echoed by the appellant) the focal issue in the matter involves the application of City Code section 17.10.010.K which calls for the "balancing" of private views and avoidance of the "substantial elimination of an existing significant view." Obviously, this section does not require that all neighbors' views be completely protected. If that were the case no second story additions could ever be allowed. Proper interpretation of subsection K is further enabled by the context provided by other sections of the City Code (also cited by the appellant) which involve terms such as "reasonable" and "fair" (§ 17.10.010.M) and "sharing" (City Design Guideline § 5.1). City Design Guideline 5.3 helps further define these concepts of balance and sharing by stating that designs should maintain "some" (not all) views through the site from other properties. It is also worth noting that the Sayles' design was the product of careful attention given early on by Mr. Sayles' architect to the appellant's private views (see Attachment 3; hearing testimony from architect Brian Congleton).

As analyzed and explained by City staff, the approved design strikes a fair and reasonable balance between private view interests as called for by the Code. The City Council also went one step further by conditioning the project to move the proposed addition two feet to the north in order to further reduce impact to the appellant's views. In the end, the appellant and Mr. Sayles will both share ground floor and second story views. This is a site specific/design specific issue and the City Council, within their discretion and authority appropriately interpreted and applied the Code. No substantial issue under the LCP or the Coastal Act is raised by the appeal and it should therefore be dismissed.

Thank you for your consideration. As previously discussed, you are more than welcome to visit the site if you would like to see the circumstances firsthand.

Very truly yours,

FENTON & KELLER
A Professional Corporation

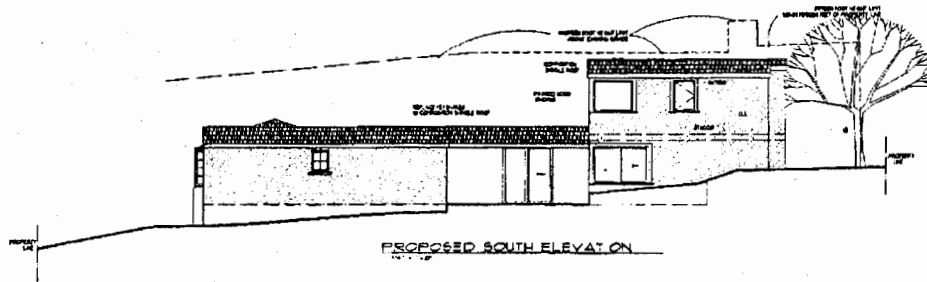


John S. Bridges

JSB:kmc
Enclosures

cc: Brian Congleton
Shan Sayles

ATTACHMENT 1



Sayles Residence – South Side Elevation showing addition to rear of existing house. Sayles property is in coastal zone, subject to eighteen-foot height limit (shown as dashed line above house). Property to east is not in coastal zone, not subject to eighteen-foot limit.


Because of the existing courtyard to rear of existing house (which was excavated into hill when built in 1930's), the eighteen-foot limit with which we are complying is actually lower than the historical slope, making the addition lower as well.

ATTACHMENT 2

Sayles Residence

Exhibit 6: Correspondence
A-3-CML-07-042
Sayles SFR Addition
Page 4 of 11





View over Sayles residence

Exhibit 6: Correspondence
A-3-CML-07-042
Sayles SFR Addition
Page 5 of 11

San Antonio Avenue

Garden Lot

Neighbors' Views

Trainer / Brady

Finegan

San Antonio Avenue

Garden Lot

Neighbors' Views

Trainer
Brady

Finegan

San Antonio Avenue

Garden Lot

Neighbors' Views

Trainer / Brady

Finegan

San Antonio Avenue

Garden Lot

Neighbors' Views

Trainer / Brady

Finegan

San Antonio Avenue

Garden Lot

Neighbors' Views

Trainer

Brady

Finegan

<p> </p>	<p> Proposed Addition - Moved five Feet north </p>
----------	---

<p> </p>	<p> Proposed Addition - Moved five Feet north </p>
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<p> </p>	<p> Proposed Addition - Moved five Feet north </p>
----------	---

<p> </p>	<p> Proposed Addition - Moved five Feet north </p>
----------	---

~~THE PLAN SHOWING PROPOSED ADDITION~~
(Moved five feet north)

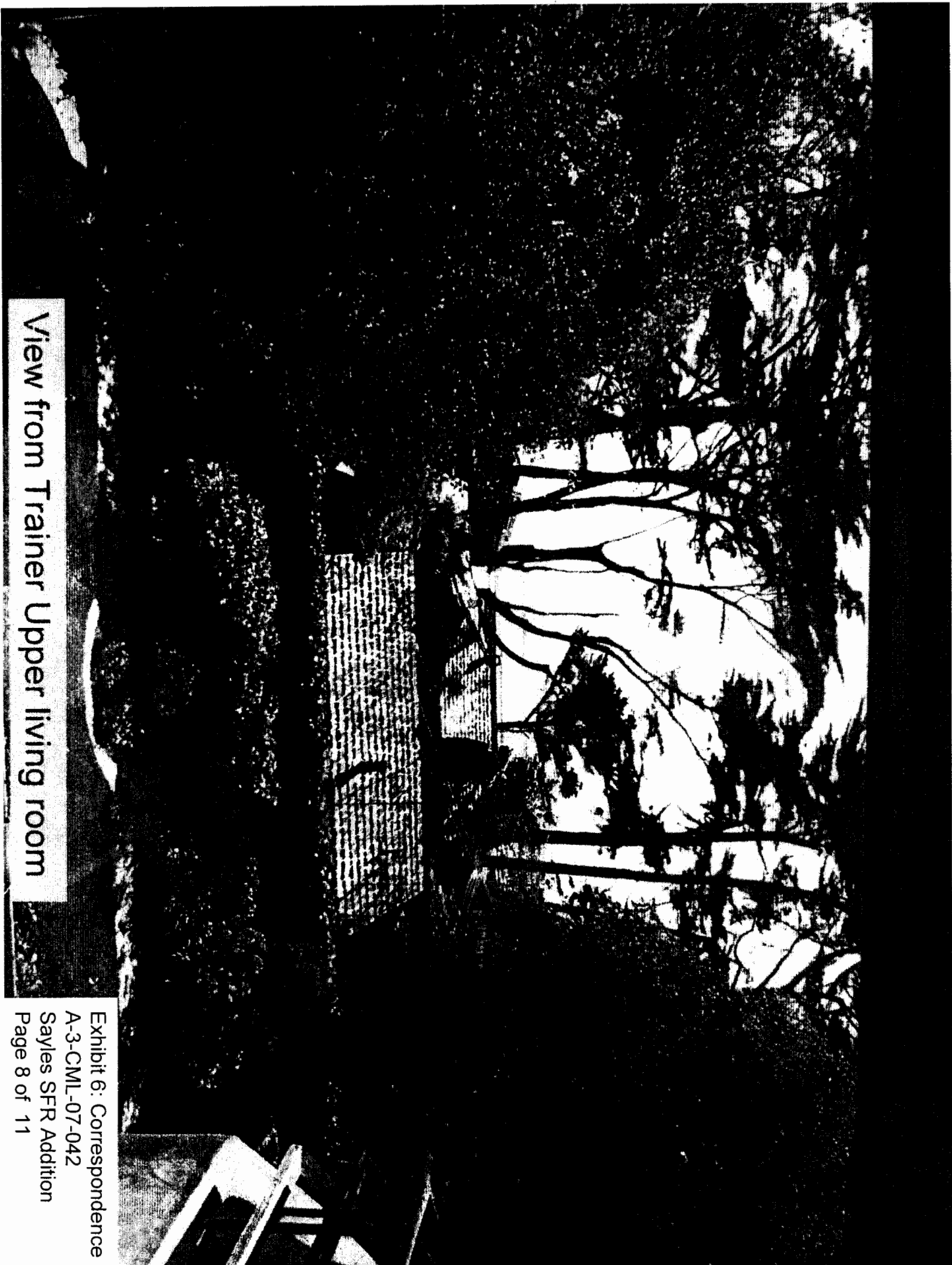
~~THE PLAN SHOWING PROPOSED ADDITION~~
(Moved five feet north)

~~THE PLAN SHOWING PROPOSED ADDITION~~
(Moved five feet north)

Exhibit 6: Correspondence
A-3-CML-07-042
Sayles SFR Addition
Page 6 of 11



Trainer/Grady Residence - east



View from Trainer Upper living room

Southwest view from Finnegan dining room



Exhibit 6: Correspondence

A-3-CML-07-042

Sayles SFR Addition

Page 9 of 11

ATTACHMENT 3

Good afternoon, Mayor & Members of Council. My name is Brian Congleton and I am the architect for Shan Sayles. I would like to thank staff for a report, which accurately defines the nature of our appeal, that the decision of the Architectural Review Board does not correctly reflect Carmel's policy to balance views.

Shan wishes to replace a guest house/subordinate unit behind his one-story residence with a second-story master bedroom suite, to enjoy the superb ocean view. When I first met with Shan, we immediately focused on the fact that the neighbors to the east share this same view. I first met Shan when working with several San Antonio property owners to protect their views; we ultimately negotiated a "balancing" of views with the property owner to the west.

We recognized that any upper floor element had the potential of impacting views, and sought to find a design solution minimizing that impact.

The neighbor to the immediate east of Shan's house has a two-story structure with views from the first floor living, kitchen and dining rooms and second-story bedroom and upper living room. A large oak tree in the northeast corner of Shan's lot blocks much of the view from the living and bedroom. We decided to locate the addition in front of the oak tree, where views are already very limited.

Shan's property is in the Coastal zone, and is limited by an eighteen foot height limit rather than the twenty-four foot limit enjoyed by the properties to the east. In fact, when Shan's house was originally built, the sloping lot was flattened for a rear patio; the result is that our height limit is about two feet lower. Our proposed addition is low enough that impact on the neighbor's upper story view is minimal.

Shan owns a garden lot to the north of his residence. The property to the east of the lot (the Finnegan's) enjoys a broad view over the garden, as well as a limited diagonal view over the roof of Shan's house. The Finnegan's fear their main view will be totally lost if a house is built on the garden lot, leaving them only the diagonal southwest view. Any future proposal for the garden lot, which would impact the Finnegan's view, would be critically studied via this same review process that we undergo today. However, we also are sensitive to their diagonal view. We decided, therefore, to locate our addition as far to the rear of the lot as possible, to minimize our impact on the Finnegan's southwest view. I would note that while Shan has the right to build on the garden lot, he has no intent to do so at this time, so the Finnegan's will continue to enjoy their broad view across the garden that they have had for many years.

So our proposed addition is set back on the lot, lower in height, and in front of the existing tree to limit view impacts. We feel that we have made every effort to "balance views" as called for in the design guidelines. Our desire, however, is to make every effort to respect the neighbors, so we have followed up on staff's recommendation to move the addition to the north, to protect the neighbor's views. As you saw on the property tour yesterday, we have erected additional

height poles five feet to the north of our original proposal. Outlines of the proposed addition are shown dashed at the original proposed location and solid at the "five-foot north" option. Moving the addition to the north further reduces the impact on the Trainer residence to the east, with a modest additional impact to the Finnegan residence to the northeast.

In summary, we have made every effort to locate our proposed addition in a place where views are largely blocked by vegetation, to hold the structure as far to the rear of the property as possible, and to keep its height at a minimum. And we are amenable to following staff's recommendation to move the addition to the north, to further respect the neighbor's view. We do feel that we have adhered to every aspect of Carmel's policy to respect and balance views, and ask that you grant the appeal and overturn the decision of the Architectural Review Board.

Lastly, we would like to thank the Finnegans and the Trainer family for their courtesy and cooperation. Friendliness has prevailed, not the animosity that sometimes occurs, and we are very appreciative of such a positive interaction through this process. And thank you, members of Council, for your thoughtful consideration of our appeal.